(1)

Supreme Court, U.S.
FILED

01-251 AUG 07 2001

OFFICE OF THE

CAUSE NO. _____

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

OCTOBER TERM 2000

REGINALD BROWN,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

On Petition for Writ of Certiorari
to the Court of Criminal Appeals of the State of Texas

PETITION FOR WRIT OF CERTIORARI

DONALD F. KILLINGSWORTH
State Bar No. 11409050
111 North Spring Street
Tyler, Texas 75702
Telephone: 903/597-5595
Facsimile: 903/597-5596
Attorney for Petitioner

32 pp

TO THE SUPREME COURT OF THE UNITED STATES:

Now comes REGINALD BROWN, Petitioner, and files this his Petition for Writ of Certiorari requesting the Court to review the decision of the Court of Criminal Appeals of the State of Texas denying Petitioner's writ of habeas corpus seeking to set aside his conviction for sexual assault, and in support thereof would show the Court as follows:

QUESTIONS PRESENTED FOR REVIEW

1. Is a criminal defendant's right to the assistance of counsel of choice under the Sixth Amendment of the United States Constitution violated when a trial court refuses to appoint a previously-retained attorney when that attorney states that he will work for free but asks for a free transcript of a previous trial for use in a second trial on the same charge.

2. Does a trial court violate s a criminal defendant's right to due process, pursuant to the Fourteenth Amendment to the United States-Constitution, through the violation of Petitioner's right to counsel, when the trial court denies that defendant the opportunity to be represented at his jury trial by the attorney of

his choice..

LIST OF ALL PARTIES

The following are parties to this petition: REGINALD BROWN, defendant and Petitioner. THE STATE OF TEXAS, compiainant and Respondent; Donald F. Killingsworth, attorney for Petitioner.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW 1

LIST OF ALL PARTIES 2

TABLE OF CONTENTS 3

TABLE OF AUTHORITIES 4

BASIS FOR JURISDICTION 5

CONSTITUTIONAL PROVISIONS 5

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 15

PRAYER 15

TABLE OF AUTHORITIES

Bland v. California Dept. of Corrections, 20 F.3d 1469 (9th Cir. 1994) 9

Flanagan v. United States, 465 U.S. 259, 104 S.Ct. 1051, 79 L.Ed.2d 288 (1984) 10

Gideon v. Wainwright, 372 U.S. 335, 344 (1963) 9

Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942) 9

Harling v. United States, 387 A.2d 1101 (D.C.Cir. 1978) 10

United States v. Padilla-Martinez, 762 F.2d 942 (11th Cir. 1985) 14

United States v. Sites, 56 F.3d 1020 (9th Cir. 1995) 15

Wheat v. United States, 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988) 15

BASIS FOR JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. §1257 and Rule 13.1 of this Court. The judgment sought to be reviewed in was entered May 9, 2001, and this petition is therefore due on or before August 7, 2001.

CONSTITUTIONAL PROVISIONS

The following constitutional provisions are the subject of this petition, true and correct copies of the relevant part of which are attached to this petition in the appendix:

The Sixth Amendment to the U.S. Constitution

The Fourteenth Amendment to the U.S. Constitution.

STATEMENT OF THE CASE

Petitioner is currently being held in confinement by the Director of the Texas Department of Criminal Justice, Institutional Division, at the Choice Moore Unit located in Bonham, Texas. Petitioner is being confined pursuant to a conviction in Cause No.7-94-247 from the 7th District Court of Smith County, Texas, which was issued on the 11th day of June, 1997, on a jury's verdict convicting Petitioner of Sexual Assault, after Petitioner's plea of not guilty.

Petitioner was sentenced by trial court to eight years confinement.

An appeal was taken from this conviction to the 12th Court of Appeals of Texas which affirmed the conviction on May 26, 1999. Petitioner's Petition for Discretionary Review was denied on October 20, 1999. Petitioner's writ of habeas corpus was denied by the Court of Criminal Appeals of the State of Texas. See Appendix D.

REASONS FOR GRANTING THE WRIT

This court should grant certiorari in this cause the Court of Criminal Appeals of Texas has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals. *See* Supreme Court Rule 17.1(b). The Court of Criminal Appeals has also decided an important question of federal law which has not been, but should, be decided by this Court or has decided a federal question in a way which conflicts with applicable decisions of this Court. *See* Supreme Court Rule 17.1(c).

DENIAL OF RIGHT TO COUNSEL

Petitioner asserts that the was denied his right to counsel for the following reasons:

The case at issue herein, Cause No. 7-94-247, The State of Texas v. Reginald Derwin Brown, was tried twice with the first trial beginning February 20, 1995. At that trial, William Ravkind, a.k.a. "Billy Ravkind, Jr.", a Dallas attorney, was initially retained as lead trial attorney. Clifton Roberson was later retained as local attorney to assist Mr. Ravkind. Both attorneys were retained for the first trial in 1995. On February 23, 1995, during the punishment stage of that first trial, the trial court found that a violation of a Brady v. Maryland motion regarding a videotaped statement of a state's witness was found to have occurred. A mistrial was granted.

On March 10, 1997, the case was called for the retrial. Prior to, and in anticipation of, the March 10, 1997 trial docket call hearing, Mr. Ravkind had filed a written Motion for Continuance and Motion to Withdraw when Petitioner could no longer afford to pay him. These two motions were the basis of the discussion at the docket call hearing. Mr. Roberson stated "Judge, Mr. Ravkind was the **lead attorney** in the case. I didn't file the motion; however, I will adopt his motion in this case, Your Honor." Mr. Ravkind emphasized his position throughout March 1997 docket call as one of needing a transcription of the

testimony at the first trial in order to adequately represent his client. Indeed, although Mr. Ravkind filed a motion to withdraw, he continually offered to continue as Mr. Brown's attorney, if the Court would only provide a copy of the transcript of the first trial. Mr. Ravkind found himself on the horns of a dilemma: To either (1) stay on the case without the transcript (which he stated on the record that the Brown family could not afford to provide, but which the Trial Court subsequently provided for the defense before the trial) which was essential to cross-examine the State's witness, and without which he would be ineffective as a trial lawyer, or (2) to withdraw as retained counsel and seek to become court-appointed counsel, through which position he could obtain the essential transcription. Mr. Ravkind's dialogue with the trial court cuts to the essential issues: an essential transcript for cross examination of witnesses, and his earnest desire, even at his own expense, to continue his and Mr. Brown's attorney-client relationship. See Appendix B.

On March 13, 1997, the Court conducted a hearing on Mr. Roberson's Motion to Withdraw as retained counsel. See Appendix C.

The decision of the Court of Criminal Appeals conflicts with

decisions of federal and state appellate courts. Petitioner asserts that a trial court may not, with impunity, deny a criminal defendant the right to representation by counsel of his choice, especially where that counsel has indicated he would work for free and asks for what he would otherwise be entitled to on a finding of indigency on the part of the defendant. The trial court made such a finding. *See* Appendix E.

Under the Sixth Amendment, an accused is entitled to the assistance of counsel. The Sixth Amendment is made applicable to the states by virtue of the Fourteenth Amendment. See Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

The Sixth Amendment right to counsel includes the right to be represented by counsel of one's choice. ***See United States v. Padilla-Martinez***, 762 F.2d 942, 946 (11th Cir. 1985) citing ***Glasser v. United States***, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942). The presumption is that a criminal defendant may have counsel of his choice if he can pay for it and **if counsel is willing** [emphasis added]. ***United States v. Sites***, 56 F.3d 1020, 1024 (9th Cir. 1995) citing ***Wheat v. United States***, 486 U.S. 153, 164, 108 S.Ct. 1692, 1699-1700, 100 L.Ed.2d 140 (1988). The denial of qualified right to counsel of choice

is reversible error regardless of whether prejudice is shown. ***Bland v. California Dept. of Corrections***, 20 F.3d 1469, 1478 (9th Cir. 1994). This lack of a requirement to show prejudice where one is denied his right to counsel of choice, which arises from the right to represent oneself, stems from the fact that it "reflects constitutional protection of the defendant's free choice independent of concern for the objective fairness of the proceeding." ***Flanagan v. United States***, 465 U.S. 259, 267-68, 104 S.Ct. 1051, 1056, 79 L.Ed.2d 288 (1984).

Although an indigent defendant does not have the right to counsel of his own choosing, once counsel is appointed, the trial judge is obliged to respect the attorney-client relationship created through the appointment. ***Stearnes v. Clinton***, 780 S.W.2d at 221. The attorney-client relationship between appointed counsel and an indigent defendant is no less inviolate than if counsel is retained. Id. at 222; *see also* ***Hercules v. Harmon***, 864 S.W.2d 752, 754 (Tex.App. -Houston [14th Dist.] 1993).

In ***Harling v. United States***, 387 A.2d 1101 (D.C.Cir. 1978), the same proposition was upheld, to-wit: ". . . a trial judge does not have the inherent power to remove defense counsel." Id. at 1102.

BEST AVAILABLE COPY

Likewise, in ***Wheat v. United States***, 486 U.S. 153,108 S.Ct. 1692, 1697, 100 L.Ed.2d 140 (1988), the Supreme Court stated that a presumption exists that a defendant is entitled to counsel of his choice and a trial court cannot infringe upon one's constitutional right to counsel unless there is an actual or serious potential for conflict. Id. at 166; 108 S.Ct. at 1700.

In ***Smith v. Superior Court of Los Angeles***, the California appellate court wrote on the critical, integral nature of the personal relationship between the defendant and the lawyer. The Court quoted Justice Mosk that ". . . the attorney-client relationship 'involves not just the casual assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney.' Id., 68 Cal.Rptr. at 10, 440 P.2d at 74.

The facts in the present case, it is significant that Mr. Ravkind was Mr. Brown's retained counsel, with whom he formed a close attorney-client relationship. Mr. Ravkind continually sought to remain Mr. Brown's trial counsel in the retrial of the case in which Mr. Ravkind was lead counsel. Mr. Ravkind's efforts to be trial counsel for

Mr. Brown included stating his willingness to be appointed as trial counsel in the case, offering to pay all the expenses for himself and his legal assistant, and even suggesting that, if his Houston case settled as he anticipated, working for free. Significantly, in terms of trial scheduling, Mr. Ravkind stated he would be available on the April 14th setting the trial court wanted, thereby expediting the Court's docket, not delaying it. By contrast, Mr. Roberson was unavailable on that date because of the previously set murder trial. Further, the only impediment Mr. Ravkind had to continuing representing Mr. Brown was obtaining a transcription of the testimony of the first trial for cross-examination at the second trial, which, as retained counsel, the defendant would be required to provide and pay for. However, if the defendant had court-appointed counsel, the defendant would be entitled to obtaining a transcription at no cost, in the interest of justice. Thus, Mr. Ravkind sought to continue as Mr. Brown's attorney, not as retained counsel, but, rather as court-appointed counsel, even at no cost to the court, in order to get the free transcription.

Both Mr. Ravkind, the lead counsel of the first trial, and Mr. Roberson had been retained. Both sought to be released, and were

released, as retained counsel. Mr. Ravkind was diligent in his efforts to remain Mr. Brown's counsel.

Mr. Ravkind voiced his expectancy that he could be available for trial on April 14th. Mr. Roberson stated a need for a further delay because of the previously set murder case in another court. Mr. Ravkind's continued representation of Mr. Brown, and the continued attorney-client relationship between Mr. Ravkind and Mr. Brown, would not be an impediment of the trial court's docket or scheduling. Rather, Mr. Ravkind's continued representation would facilitate the orderly progression of the court's docket.

Case law makes it clear that, where a defendant and his lawyer have established an attorney-client relationship, the trial court should not severe that relationship. This is especially the case when an attorney-client relationship has extended over many months or has included a previous trial, such as in the present case. Mr. Ravkind had been Mr. Brown's lead trial attorney prior to the first trial, and for over two years thereafter. Mr. Ravkind, in whom Mr. Brown had placed his confidence and reliance as his lead counsel when Mr. Brown had assets to retain counsel, continued to ask the court to appoint him to represent

Mr. Brown. Mr. Ravkind even offered to try to refund any fees the state would pay a court-appointed counsel. Mr. Ravkind also offered to pay all his own and his legal assistant's expenses. He just wanted to continue to represent the defendant, Reginald Brown. The trial court chose, rather, to sever that attorney-client relationship between Mr. Ravkind and Mr. Brown, and appointed Mr. Roberson for the second trial on this case. There was no benefit for the trial court in terms of efficiency and moving the court's docket. Indeed, Mr. Ravkind was available for the April 14th trial date, and Mr. Roberson was not, which required the trial to be rescheduled to accommodate Mr. Roberson's schedule. The court subsequently provided the defendant, Mr 'Brown, with a free transcription of the first trial, a Mr. Ravkind had requested and which was the essence of his requests on March 10th.

Clearly, had the court initially provided the transcription of the previous trial, Mr. Ravkind could have continued his representation of Mr. Brown at no cost to the trial court. By terminating Mr. Ravkind's and Mr. Brown's attorney-client relationship, the trial court violated Mr. Brown's United States Constitutional right under the Sixth and the Fourteenth Amendments. Those constitutional provisions, and the case

law interpreting the same, hold that violating the attorney-client privilege is an unconstitutional violation of Mr. Brown's rights.

CONCLUSION

Because of the trial court violated Mr. Brown's, the defendant's, constitutional rights to the attorney of his choice, and the deprivation of Mr. Brown of his constitutional right, this Honorable Court should grant this Writ, and reverse the Petitioner's, conviction, and remand this case for a retrial with the attorney of his choice, and with whom he had an abiding attorney-client relationship and in whom he had confidence.

PRAYER

WHEREFORE, Petitioner prays the Court to grant the relief requested herein, and for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

DONALD F. KILLINGSWORTH
State Bar No. 11409050
KYLE S. MORRISON
State Bar No. 14521300
111 North Spring Street
Tyler, Texas 75702
Telephone: 903/597-5595
Facsimile: 903/597-5596
Attorneys for Petitioner

CAUSE NO. _____

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

OCTOBER TERM 2000

REGINALD BROWN,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

On Petition for Writ of Certiorari
to the Court of Criminal Appeals of the State of Texas

APPENDIX

APPENDIX A

The Sixth Amendment of the United States Constitution reads:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause for the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Fourteenth Amendment, Section 1, to the United States Constitution reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"

PROCEEDINGS

(March 10, 1997)

THE COURT: Let me call the next case listed, actually I was thinking was the No. 1 case, 7-94-247 State versus Reginald D. Brown.

MR. RAVKIND: Clifton Roberson and Billy Ravkind and we're not ready. We have some motions filed to address the court. I don't know where the prosecutor is, Ms. Cromer, we've been talking to.

THE COURT: I have a motion to withdraw filed by Mr. Ravkind, and a motion for continuance also filed by Mr. Ravkind.

MR. ROBERSON: Judge, Mr. Ravkind was the lead attorney in the case. I didn't file the motion; however, I will adopt his motion in this case, Your Honor.

THE COURT: Which one?

MR. ROBERSON: The one about motion for continuance and motion to withdraw, Your Honor.

THE COURT: The motion for continuance is for the whole case which would include everybody involved. The motion to withdraw --

MR. ROBERSON: The same grounds, Your Honor.

THE COURT: It looks like it's --

MR. RAVKIND: Your Honor, I don't like leaving a client out there. I don't know what the Court's

APPENDIX B

practice is. I would accept an appointment. We have come from Dallas, and I don't mind paying the expenses for myself and my paralegal. It's just the whole thing is really burdensome. We do need a copy of the transcript. When I have that, I could be ready for trial relatively quick, although I don't think I can be ready this week; but I can certainly be ready -- I have a trial in Houston April 7th. I'm confident it's going to settle. That's all I can say on that. We've been dilatory in filing the motion because the Bishop has been trying to raise the money. I didn't want to have to withdraw until I have to withdraw.

THE COURT: But then you're not allowed to withdraw at a time that might prejudice your client. I understand you're on the horns of a dilemma there.

MR. RAVKIND: The dilemma is really the transcript. It's relatively expensive. It's a somewhat lengthy trial and there's even the interesting issue on, as you probably know, on the due process, excuse me, double jeopardy issue of whether or not the jury can be submitted that issue if indeed the appellate court has rejected it. I've done a bunch of research on it. It's an interesting issue and you'd probably enjoy looking at it, if in fact we were able to submit that to a jury, which I haven't decided either. There's a lot involved. Concerning not to try to delay the court's docket.

(Other matters heard before the court.)

THE COURT: Going back to the top of the docket, let me have Reverend Brown, Mr. Roberson, Mr. Ravkind and the State approach.

(At the bench.)

THE COURT: Mr. Brown, you've been presented with a copy of your motion to withdraw that the attorney filed --

THE DEFENDANT: Yes, sir.

THE COURT: -- withdrawing. We've got a jail case in front of you that needs to go to trial. I'm going to grant Mr. Ravkind's motion to withdraw and that's been done. Then the motion for continuance will be granted and the case reset for April 14th.

Let me ask the State. Mr. Dobbs, may I see you a moment.

(Discussion off the record.)

Thank you. This case is reset for April the 14th at 9 a.m. and I didn't, Mr. Roberson, I had no --

MR. ROBERSON: Judge, in this case I was talking as late as Friday and he was still trying to come up with the money. I haven't had a chance to file the same motion as Mr. Ravkind, but I will get a document with that motion and have it filed with the court probably Wednesday. He just doesn't have the funds. I think you'll have to

hear the evidence to try to get a court appointed attorney.

THE COURT: If that's going to be the situation, it needs to be filed; and I need to have a hearing on Friday or maybe we can do it Thursday afternoon. We're already set in here at 3, so we could take that up at 3:30 p.m. on Thureday. If you don't have something filed and prepared and have a hearing by 3:30, then I can tell you the answer that you're going to get on the motion for continuance or withdrawal.

MR. ROBERSON: It will be filed, Judge.

THE COURT: Then, Reverend Brown, you need to be here Thursday at 3:30 if a motion is filed and so that we can take up whether there is some issue of Mr. Roberson's withdrawal, indigency, if any, that kind of thing. Otherwise, then we'll plan on going to trial April 14th with Mr. Roberson as your sole counsel.

MR. ROBERSON: Judge, looking ahead, I can tell you right now that somehow the Court keeps moving the case. I've got a murder case in the 241st, Mildred Russell, co-counsel with Mr. McClain which is going April 7th which is going to probably take two to three weeks. As soon as we get through with that trial, we've got the (inaudible. We don't want to run into that one.

MR. RAVKIND: I have a case set in Houston on April 7th I'm confident is going to settle. It's a

breast implant case. We've settled them all so far. I will be available. I will be able on the 14th unless that case goes to trial in Houston. I would be willing to take a court appointment and pay my own expenses from Dallas to Tyler. I'm simply just limited to what -- I'm doing a lot of pro bono work in Dallas right now, too, and there's a limit to what I feel I can do but that's up to the Court. Obviously, I know a great deal about the case and can, certainly, no reason once I get a transcript, I can't be ready for trial on the 14th, subject to me not being to trial in Houston. That's, I'll leave that up to you. I will pay my own expenses.

THE COURT: So the breast implant case you would be able to use that to augment the --

MR. RAVKIND: I could probably if -- actually if we get the settlement that we're looking for, I might even give the state back its court appointed fee money. That's up to the Court.

THE COURT: Let's see what happens at the hearing on Thursday and go from there.

As of right now, Mr. Ravkind, you are excused on the case unless you are to be taken up on your offer for appointment.

MR. RAVKIND: Thank you.

THE COURT: Mr. Ravkind, Mr. Roberson, we do

APPENDIX C

need a current address on Reverend Brown. My court coordinator says we don't have one.

P R O C E E D I N G S

(March 13, 1997)

THE COURT: Cause 7-942-47 State versus Reginald D. Brown. Attorneys for both sides and the defendant are present.

We're here on a motion to withdraw Mr. Roberson has filed, is that correct?

MR. ROBERSON: Yes, Your Honor. Judge, this is the same motion that Mr. Ravkind filed that is in the case of Reginald Derrick Brown that we both were retained to represent Mr. Brown in his case that was tried before this court. Mr. Ravkind was the lead attorney. I was the local attorney. That case ended in a mistrial where Mr. Brown also had another attorney to take his case up on appeal. I think that went up to the Court of Criminal Appeals, Your Honor.

As of last Friday, I had a conversation with Bishop Reginald Brown where he was still trying to come up with money to retain myself and Mr. Ravkind's continued representation. However, Judge, he said he was not able to come up with any money. Based on that representation, Mr. Ravkind filed a motion to withdraw. I'm filing a motion to withdraw because in order to effectively represent him in this second trial, we would need the transcript, Your Honor. He cannot afford to pay for those

transcripts. Judge, he's willing to take the witness stand to prove up his financial status at this time.

THE COURT: What's the State's position?

MR. HARRIS: Your Honor, I have no objection to Mr. Roberson or the other attorney being allowed to withdraw as counsel of record in this case. However, I would like an opportunity to question Bishop Brown regarding his financial resources regarding his status as an indigent.

THE COURT: Well, do you have any objection to him testifying for the sole and limited purpose of proving up or attempting to prove up indigency?

MR. HARRIS: No, Your Honor, with the understanding that's what his testimony would be for.

THE COURT: Isn't that the understanding?

MR. ROBERSON: Yes, Your Honor. The understanding is, and he knows that the purpose of him taking the witness stand is for this Court to find his financial status in order to, for the Court to make a determination if he is to be appointed a court-appointed attorney, Your Honor.

(Court's instructions to the defendant and testimony of the defendant.)

THE COURT: All right. I had previously granted the motion for continuance and reset this case for

trial for April the 14th, and I know that a reason for allowing an attorney to withdraw is for non-payment of fees as long as it does not, is not at a time that would otherwise prejudice the client. And since I've granted the continuance to April 14th without objection, we went ahead and allowed Mr. Ravkind to withdraw. Based on the testimony of Reverend Brown, at this point I will find that he is entitled to appointment of counsel. I'm going to allow you to withdraw as retained counsel, Mr. Roberson.

MR. ROBERSON: Yes, Your Honor.

THE COURT: However, obviously, you've been working on this case for a long time and you participated in the first trial up to the point of mistrial, and I understand you've also kept abreast of the appeal that's being made, if not participating; is that right?

MR. ROBERSON: Yes, Your Honor. I've informed the Court not only have I kept in contact with the attorneys working on the appeal, also Bishop Brown; but I have been in contact with the alleged victim in the case and her family. I have had conversations with them up until last week also, Your Honor, and with the District Attorney's office.

THE COURT: I'm going to sign the order allowing you to withdraw as retained counsel but so that we do not work any further delays in this case --

MR. ROBERSON: Judge, if you're thinking about appointing me for the case, let me explain something to the Court. April the 7th I am in a murder case in the 241st District Court with Mr. McClain of Mildred Russell. I've been informed by the Judge in that court that this case has been reset and continued so many times, that she is not going to take anymore continuance but that case has to go on April the 7th which will probably take about two weeks and then right after that trial, we've got the Edward Ates' case in this court I think is set for April 27th. I think it's April 27th, which is going to probably take about two weeks, Your Honor. In the month of June, I do enroll every year in C.L.E. in San Antonio, Texas, Your Honor.

THE COURT: I'm not talking about June. I'm talking about April 14th.

MR. ROBERSON: Judge, I'll most likely be in trial in the month of April. I can, if the Court would like to appoint me to this case, do it in May, Your Honor.

THE COURT: Does the State have any objection to moving the trial date from April 14th to May 12th?

MR. HARRIS: Judge, I don't have any objection to that. We're going to have to get transcripts anyway from the past trial. I don't know what we have

setting in here in May, but I certainly think that's a much more practical date than April the 14th.

THE COURT: Mr. Roberson, you would be able to try this case on May the 14th, is that right?

MR. ROBERSON: Yes, Your Honor.

THE COURT: I'm sorry, May the 12th, not the 14th. May the 12th, yeah. May the 12th is Monday. Then I'm going to appoint you to represent Mr. Brown, Reverend Brown, and set this for trial May the 12th.

MR. ROBERSON: Yes, Your Honor, and I will be filing the paperwork with the court reporter in order to get the transcript prepared.

THE COURT: Make sure you take whatever actions are necessary because I do intend to try this case that week without any further delay.

MR. ROBERSON: I understand, Your Honor. Yes, Your Honor.

THE COURT: Anything further from either side?

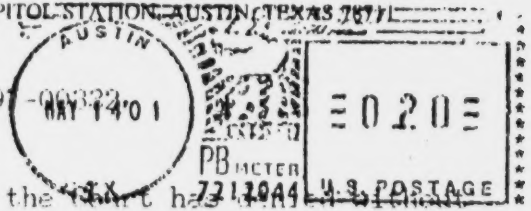
MR. ROBERSON: No, Your Honor.

MR. HARRIS: No, Judge.

THE COURT: Then we'll stand in recess.

APPENDIX D

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711



RE: Writ No. 48,940-01
STYLE: Reginald Brown
TRIAL CT NO: 7-94-247-A 12-91-00322
May 9, 2001

This is to advise that the Court has this day written order the application for writ of habeas corpus.

KYLE S MORRISON
111 N SPRING STREET
TYLER TX 75702

15

Number of Case	NAMES OF PARTIES	ATTORNEYS	OFFENSE	DATE Mo.	Day	
7-94-247	THE STATE OF TEXAS VS.	Jack Skeen, Jr. State	Sexual Assault	3	24	94
	REGINALD DERWIN BROWN	Criminal District Attorney		Information or Indictment		
FEE BOOK Vol. / Page	P. O. Box 7242					
	Tyler, Texas 75711	Clifton Roberson William Ravkind Deft.	Gary A. Bdashan APPEAL			

DATE OF ORDERS Month	Day	Year	ORDERS OF COURT	Minute Book Vol.	Page
MAR	10	1997	(Atty. Roberson & Atty. Ravking The court called case for trial this date. The Defendant, State and Defense Attorney appeared and announced ready to proceed on Motions filed before the court by the Defense. Motion to Withdraw and Defendant's Motion for Continuance. Based on the face of the Motion and what was put on the record by counsel the Court enters Order Granting Motion to Withdraw. Defendant's Motion for Continuance was granted by the court this date. The Court resets this case for trial on April 14, 1997 @ 9:00 a.m. Attorney Clifton Roberson stated he joins in the Motions filed by Mr. Ravkind. The court instructs Attorney Roberson to prepare his own motions and submit them to the court as soon possible. The Court sets a hearing regarding Indigency and Attorney Robersons withdrawal. Hearing is set for March 13, 1997 @ 3:30 p.m. and reset for April 14, 1997 @ 9:00 a.m.		
MAR	10	1997	ORDER GRANTING MOTION FOR CONTINUANCE /S/ Louis B. Gohmert, Jr.		
MAR	10	1997	ORDER GRANTING MOTION TO WITHDRAW /S/ Louis B. Gohmert, Jr.		
3	13	97	Hearing on Δ atty C Roberson's Mot to Withdraw. After hearing testimony by the Δ, court finds Δ is indigent for purposes of requiring appointed counsel. Grants Δ atty C Roberson's Mot to withdraw as retained Counsel, but finds Δ to be indigent for purposes of appointed counsel. Grants Δ atty C Roberson's Mot to withdraw because of his familiarity of the case. The State + Atty present for the reset of the case from the first trial so the case was reset for May 12, 1997 with the motions that both sides have left to be heard.		

APPENDIX E